

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 60 OF 2021

(Originating from Land Appeal No. 113 of 2019 of District Land and Housing Tribunal of Singida, Original from Ward Tribunal of Mwasauya Ward in Application No. 13 of 2019)

WILLIAM SAMWELAPPELLANT

VERSUS

MARIA MJENGIRESPONDENT

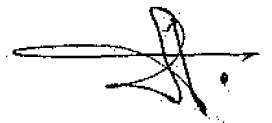
RULING

Date of Last order 14.11.2022

Date of Ruling: 24.11.2022

HASSAN, J

The present appeal stems from the decision of the District Land and Housing Tribunal (DLHT) of Singida at Singida in the Land Appeal No. 113 of 2019, which originate from Ward Tribunal of Mwasauya in application No. 13 of 2019.



The material background fact leading to the dispute is that, the appellant and the respondent are disputing over a piece of land. Initially, the

appellant filed a suit against the respondent at Mwasauya Ward Tribunal in application No. 13 of 2019. He blames her for trespassing into his suit land measured 3 acres. After its determination, the Ward Tribunal decided the matter in meritorious to the respondent. Aggrieved by the decision, the appellant preferred appeal to DLHT for further determination. All the same, decision at DLHT went against his will. Still looking for redress, the appellant preferred the instant appeal to the court.

When the appeal was called upon for hearing, the appellant William Samwel appeared in person unrepresented. While the respondent Maria Mjengi was absent in court. Though, notices for call of appearance were served to the respondent with no show at the end, including publication in the Mwananchi Newspaper in the issue dated 18th august, 2022. Thus, matter proceeded *ex parte*.



During hearing, before appellant canvassed to his submission, the court *suo motu* observed some irregularity which need satisfaction of the court as to the appropriateness of the proceeding from the Tribunal bellow.

Upon that observation, I invited party to address the court on the question raised, as to whether or not the Appellate Tribunal which sat with

two assessors has complied with section 34 (1) and section 24 of the Land Dispute Court Act, [cap 216 R. E 2002]?

By so doing, the appellant candidly asserted that he is a layman and his right was infringed in the Tribunal for being deprived of ownership of his suit land, hence, he prays for this court to do justice.

That being the case, it should be obvious that putting together what he said, he left the matter to the court for determination and decision. Now, that the matter has been rested to the court, I move back to the record of proceeding keenly to determine the allegation whether section 34 (1) and section 24 of the Land Dispute Court Act, [cap 216 R. E 2002] was fully complied. At this juncture, it is important for clarity to introduce the said sections. Section 34 (1) provide:

"The District Land and Housing Tribunal shall, in hearing an appeal against any decision of the Ward Tribunal sit with not less than two assessors, and shall-

(a) consider the records relevant to the decision;


(b) receive such additional evidence if any; and

(c) make such inquiries, as it may deem necessary".

As for section 24 deals with the opinion of assessors, it provides:

“In reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion”.

As stated above, before going further, decision in the case of **Peter Makuri V. Michael Magwega**, Civil Appeal No. 107 of 2019 (CAT) Mwanza (unreported), pressed the same on the issue of assessor participation in the decision making. In this case the court held that:

*“It is a mandatory legal requirement that in adjudicating land matters before the Tribunal, the Chairman sits with aid of assessors. The assessors sitting in are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose a decision of the Tribunal. **And all these must be reflected on record of proceedings.** Besides, where the Chairman disagrees with the opinion of the assessors, he must record reasons. **In the absence on record of the opinion of assessors, it is impossible to ascertain if they did give any opinion for consideration** in composing the judgment of the Tribunal”.* 

See also the case of: **Emmanuel Christopher Lukumai v. Juma Omari Mrisho**, Civil Appeal No. 21 of 2013 where similar stand were maintained.

Now, going back to the case in hand. It is apparent from the record of proceedings, that there is nowhere the opinion of assessors was recorded to form part of the proceedings. If there was any, then, they were left in vacuum. That is to say, one cannot see, read or even verify as whether chairman has followed or depart from those assessor's opinion.

Notably, and for the sake of precision, I wish to dictate what was transpired in the Tribunal on the date the matter was fixed for assessor's opinion. Looking at page 13 and 14 of the typed proceeding as well as the original hand writing record, it reads as hereunder:

Date : 24/03/2020

Coram: Hon. B. J. Shuma – chairman

For appellant – present

For respondent – absent, Adv. Mussa for respondent who is ill.

Tribunal clerk – Linda

Member – Present



Tribunal

The matter is coming for reading of the assessor's opinion. They are ready and read out to the parties.

B. J. Shuma


Chairman

24/03/2020

Orders

- 1. Judgment on 28/03/2021**
- 2. Parties notified.**

Going from the above, it follows that, on so doing the chairman has violated the principle buttressed in the case of **Peter Makuri V. Michael Magwega**, and that of **Emmanuel Christopher Lukumai V. Juma Omari Mrisho** (supra), where it was stressed among other that, assessors sitting in the tribunal are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose decision of the Tribunal. And all these must be reflected on record of proceedings.

In my view, failure to record each assessor's opinion before judgment was pronounced is a fatal omission which nullify the judgment. In the circumstance, as it stands from the record of proceeding, one can inquire as  from where the chairman read over the opinion as he narrated in the judgment. In fact, the question as to whether assessors have given their

opinion is left open for debate. In my opinion, not to record assessors' opinion in the proceedings emanates that there was nothing.

To that end, there is no confirmation that the chairman composed the decision with the aid of assessors so long as their opinion was not tangibly recorded in the proceedings. Going further by observing the judgment, I am aware that in page 7 paragraph 2 of the judgment, the chairman narrates that, I quote:

"I agree with the assessors that the respondent is entitled to the land due to the fact that Elia Mpiku had no title to pass into the appellant for reason stated above".

As stated above, assessor's opinion was not recorded anywhere. So how the chairman was able to follow that opinion is a hard nut to crack. In my endeavor to find an answer to this query, drawing inspiration from the above decision and provisions of law including sections 23(1) and (2) of the Act, which deals with the composition and role of assessors. Of which it reads: -



"23 (1) The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors.

(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment".

From the provision of section 23 (1) and (2), the composition of the Tribunal has been listed to be mandatorily, a chairman sitting with not less than two (2) assessors. On the other hand, under section 23 (2), which has to be read together with Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN No. 174 of 2003 (the Regulations), the requirement is that after taking part in the conduct of the matter, the assessors are required to give their opinions in writing and the same be read out to the parties before the Chairman pronounce a decision which has incorporated those opinions. See also: **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported).

All said and done, in my view, guided by the above, I am certain that failure to observe all these principles is a fatal error in the wards of law. In the consequences thereof, the only remedy available in such situation is to nullify the proceedings and set aside the resulting orders. That being the case, I subsequently invoke the power given to this court by virtue of section 43 of the Land Disputes Courts Act, Cap 216 R.E 2019, to nullify the

proceedings and set aside the orders meted. Additionally, I order that the appeal be remitted to DLHT of Singida to be heard *de novo* by another chairman with new set of assessors. No order as to costs, since the matter was raised by the court *suo motu*.

Ordered accordingly.

DATED at DODOMA this 24th day of November, 2022.



A handwritten signature in blue ink, appearing to read "S. H. Hassan".

**S. H. HASSAN
JUDGE
24th November, 2022**

This Judgment delivered this 24th day of November, 2022 in the presence of the appellant who appeared in person unrepresented and respondent was absent.



A handwritten signature in blue ink, appearing to read "S. H. Hassan".

**S. H. HASSAN
JUDGE
24th NOVEMBER, 2022**